IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

OP.No. 6139 of 1997(E)

PETITIONER:

G.VISWANATH SHET,
RESEARCH SCIENTIST, MYSORE SANDAL
PROCUCTS, SREE GOPALAKRISHNA TEMPLE,
BUILDINGS, POST BOX.NO.27, AMARAVATHY,
KOCHI 682 001.

BY ADV. SRI.P.SANKARANKUTTY NAIR
SRI.T.V.AJAYAKUMAR

RESPONDENTS:
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1. **THE CONTROLLER OF PATENTS,**
OFFICE OF THE CONTROLLER GENERAL OF PATENTS,
CENTRAL BUILDINGS, MAHARASHI KARVE ROAD,
BOMBAY 400 025.

2. **DEPUTY CONTROLLER OF PATENTS & DISIGNS,**
PATENT OFFICE BRANCH, 61,
WALLAJAH ROAD, MADRAS 600 002.

BY ADV. SRI.P.S.BIJU, ADDL.CGSC
SRI.D.SOMASUNDARAM
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN
SRI.P.S.SREEDHARAN PILLAI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.11139/1997 IN OP. NO.6139/1997

CLOSED

28.06.2007 **SD/- T.R.RAMACHANDRAN, NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PATENT A. NO.11455 DT. 4.1.1989.

EXT.P2:- COPY OF THE RELEVANT PAGE OF PATENT APPLICATION NO.650/MAS/92 DT. 27.10.92.

EXT.P3:- COPY OF THE LETTER DT. 5.10.95.

EXT.P4:- COPY OF THE LETTER DT. 9.10.1995.

EXT.P5:- COPY OF THE LETTER DT. 12.1.1996.

EXT.P6:- COPY OF THE LETTER DT. 23.11.1996.

EXT.P7:- COPY OF THE LETTER DT. 6.12.96.

EXT.P8:- COPY OF THE LETTER DT. 10.12.96.

EXT.P9:- COPY OF THE LETTER DT. 23.12.1996.

EXT.P10:- COPY OF THE LETTER DT. 1.2.1997 .

EXT.P11:- COPY OF THE LETTER NO.POM/EC/5629 DT. 10.3.1997.

EXT.P12:- COPY OF THE ORDER IN CMP. O. 2830/97 IN OP. 1630/1997.

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 6139 of 1997 (E)

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Dated this the 28th day of June, 2007

J U D G M E N T

The petitioner is a Research Scientist. He has made many inventions and has applied for granting patents with respect to his various inventions numbering about 70. It is averred that he was already granted six patents and many of his other applications for grant of patents are pending.

2. The petitioner is aggrieved by the rejection of the application for patent, namely, Ext.P2. It relates to the invention, namely, process for preparing a novel Sandal Wood Oil Perfume in oil base form with the help of imported Sandella (Cyclonexanol) with Cedar wood oil. Ext.P3 will show that even though the application was accepted, that was returned for curing certain defects. After curing defects, the petitioner forwarded the same as per Ext.P4. Again the second respondent gave a reply as per Ext.P5 stating that the objection noted in Ext.P3 have not been met. The petitioner gave explanation as

per Ext.P6. Then he received Ext.P7 reply. In Ext.P7 reply what is noted is that the application is being returned for reason that the claims do not define any invention under Section 3(e) of the Patent Act, 1970. When the petitioner received the same, he gave a further reply as per Ext.P8. Therein, he offered that if the respondents insisted for disclosing the process paper, safe guards may be given to protect his rights. Again, one reply is given as Ext.P9, wherein, the second respondent has not offered any guarantee with respect to the secrecy of the invention as requested in Ext.P8. The petitioner further sought for an extension of time by Ext.P10 stating that the normal period for putting of the application has been expired. The said application was also rejected by Ext.P11. Aggrieved by the same the petitioner has approached this Court.

3. No counter affidavit has been filed by the respondents in the matter. The learned counsel for the petitioner points out that the inventions specified in Ext.P2 would come within the definition of invention under Section 2(1)(j) of the Patents Act, 1970. It is therefore pleaded that the petitioner is entitled to get

patent in respect of those inventions. The patent was sought for the invention, namely, process for preparing a Novel Sandal Wood Oil Perfume in oil base form with the help of imported Sandella (Cyclonexamol) with Cedar wood oil. It is submitted that the novelty is in the process of manufacture and not in the article produced. Therefore, it is submitted that the reply given in Ext.P7 is not legally sustainable. Further, in the reply, there is no case that invention do not define any process step also.

All that the petitioner wants is a consideration of the application. In the light of the above facts, the petitioner is justified in seeking a direction to consider Ext.P2 or submit a fresh application. I think, in the circumstances of the case, the petitioner can be allowed to file a fresh application after completing all the formalities prescribed under the Act. Therefore, if the petitioner forwards a fresh application with all the necessary details, within a period of two months from today to the second respondent, the second respondent shall consider the same on its merits and take appropriate action, under law,

expeditiously. With the above direction, this original petition is disposed of.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 6139 of 1997 (E)

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J U D G M E N T

28th June, 2007